

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5359 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

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GUJARAT WATER SUPPLY AND SEWERAGE BOARD

Versus

KANJIBHAI NARANBHAI C/O MILL MAZDOOR SANGH

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Appearance:

MR HS MUNSHAW for Petitioner

MR HJ NANAVATI for Respondent No. 1

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CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 15/12/97

ORAL JUDGEMENT

By means of filing this petition under Articles 226 & 227 of the Constitution, the petitioner has prayed to issue a writ of certiorari or any other appropriate writ, order or direction to quash and set aside award dated December 2, 1996 rendered by the learned Presiding

Officer, Labour Court, Surendranagar in Reference (L.C.S.) No. 109/93 whereby the petitioner is directed to reinstate the respondent in service without backwages.

By notification dated January 27, 1992, Revenue Department of Government of Gujarat declared that 579 villages of Surendranagar district were affected by scarcity. In order to make potable water available to those residing in scarcity affected areas, Collector, Surendranagar had allotted two tankers to the petitioner on October 18, 1991. The respondent was employed as cleaner so far as Tanker bearing registration no. GRX-4723 is concerned. After the work of supplying water to those who were affected by scarcity was over, the tanker was surrendered by the petitioner to Collector on May 20, 1992. As scarcity work was over, the respondent was discontinued from service. He raised an industrial dispute and demanded reinstatement in service with backwages. The dispute was referred to Labour Court, Surendranagar for adjudication by Assistant Labour Commissioner, Surendranagar vide order dated April 3, 1993. The Labour Court by award dated December 2, 1996 has directed the petitioner to reinstate the respondent in service, giving rise to the present petition. The award passed by the Labour Court is produced at Annexure-A to the petition.

2. Learned Counsel for the petitioner submitted that when the petitioner during famine and drought undertook relief works intended to provide needed relief to scarcity affected people living in affected areas, it had not embarked upon any industrial or commercial enterprise but was merely trying to fulfil its obligation towards its people who were hit by nature's wrath and, therefore, the award deserves to be set aside. It was pleaded that there was no desire or intention to launch a durable industrial or commercial enterprise, but the paramount idea or consideration was to provide relief to the scarcity affected people who had been deprived of livelihood because of failure of monsoon and as work undertaken was completed, the petitioner should not have been directed to reinstate the respondent in service. It was highlighted by the learned Counsel for the petitioner was that by starting relief works or projects, the petitioner had merely fulfilled its duties towards the scarcity affected people and was not operating in the field of commerce or industry for the production or distribution of goods or services and, therefore, the petition should be allowed.

3. Learned Counsel for the respondent submitted that

the respondent had undertaken systematic activity and, therefore, Labour Court was justified in rendering the impugned award in favour of the respondent. It was pleaded that before discontinuing services of the respondent, provisions of Sections 25-F, 25-G, 25-H & 25-N of the Industrial Disputes Act, 1947 were not complied with by the petitioner and, therefore, the direction given by the Labour Court to the petitioner to reinstate the respondent in service should not be interfered by the Court in the present petition, which is filed under Articles 226 & 227 of the Constitution.

4. The point raised in the petition is squarely covered in favour of the petitioner by the decisions rendered in the cases of (1) J.J.Shrimali vs. District Development Officer, Mehsana & ors., 1989(2) G.L.H. 12, and (2) H.K.Makwana vs. State of Gujarat & ors, 1994(2) G.L.R. 1002. In the case of J.J.Shrimali (Supra), the Division Bench has held as under :-

"When a State Government during famine and drought undertakes relief works intended to provide the much needed relief to scarcity affected people living in affects areas, it is not embarking upon any industrial or commercial enterprise but is merely trying to fulfil its obligation towards its people who are hit by nature's wrath. There is no desire or intention to launch a durable industrial or commercial enterprise but the paramount idea or consideration is to provide relief to the scarcity affected people who have been deprived of livelihood because of the failure of the monsoon. Since our agriculture agency depends heavily on the vagaries of the monsoon, failure of the monsoon and that too in successive three years, is bound to adversely affect people dependent on the monsoon. In rural areas failure of the monsoon would result in stoppage of all agricultural activities and those dependent on work in the fields would suddenly find. In such a situation the State machinery must step in to provide relief and succour to the affected people. If, instead of distributing doles which may hurt the dignity, self - respect and sentiments of those receiving the same, the State Government introduces schemes which would provide temporary work to the same, can it be said that the State has embarked on a commercial industrial activity so as to label relief works or projects as 'industry'? As pointed out earlier, the

paramount idea to provide relief for tiding over the difficult period and it matters not whether the work undertaken is completed or not, the relief work or project will be wound up once nature showers its bounties in the affected area. It seems clear to us that by starting relief works or projects, the State Government is merely fulfilling its governmental duty towards the scarcity affected people and is not operating in the field of commerce or industry for the production or distribution of goods or services."

5. Again, the Full Bench in the case of H.K.Makwana while confirming the decision rendered in the case J.J.Shrimali, has held that the employment offered to the persons on the scarcity relief works as undertaken by the State cannot be said to be an "Industry" as defined by Section 2(j) of the Industrial Disputes Act, 1947 because, (a) it is the primary and inalienable function of the State to provide livelihood to the persons who are affected by the natural calamities such as famine, earthquake, epidemic, flood, scarcity, etc. and, (b) admittedly, the relief work is not a 'business' or 'trade' and with regard to the 'undertaking', the activity is not analogous to trade or business or that it is not a systematic activity but is carried out casually at different places depending on the calamities in a particular area.

6. In view of the abovereferred to decisions, there is no manner of doubt that when the petitioner during famine and drought undertook relief work intended to provide the needed relief to scarcity affected people living in affected areas, it had not embarked upon any industrial or commercial enterprise, but had merely tried to fulfill its obligation towards its people who were hit by nature's wrath. There was no desire or intention to launch a durable industrial or commercial enterprise, but the paramount idea or consideration was to provide relief to the scarcity affected people who had been deprived of livelihood because of failure of monsoon. The respondent was retrenched as per Clause (bb) of Section 2(oo) and was, therefore, not entitled to benefit of section 25-F, nor entitled to benefit of section 25-N of the Industrial Disputes Act, 1947. The work undertaken was completed and the relief work or project was wound-up. Therefore, the respondent was not entitled to reinstatement in service at all. On the facts and in the circumstances of the case, I am of the view that the impugned award is liable to be set aside and the petition deserves to be accepted.

For the foregoing reasons, the petition succeeds. The award dated December 2, 1996 rendered by the learned Presiding Officer, Labour Court, Surendranagar in Reference (LCS) No.109/93, which is produced at Annexure-H to the petition is hereby quashed and set aside. Rule is made absolute, with no order as to costs.

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